

REMARKS

Notice of Non-Compliant Amendment

The Amendment submitted to the Patent Office on September 27, 2005 (apparently received on September 29, 2006) was considered non-compliant because the status identifier for certain claims read “amended” and not “currently amended”. The error has been corrected.

Claim Rejections – 35 USC §112

Claims 1-22 stand rejected under 35 U.S.C. 112 as allegedly being indefinite. Specifically, the Examiner takes the position that the claim terms “heteroaryl” and “heterocycle” are indefinite because it is not known, for instance, how many and which atoms are present, and/or how many rings are present. Applicants respectfully traverse.

Applicants direct the Examiner to the specification at page 28, lines 4 through 34, wherein complete definitions for both “heteroaryl” and “heterocycle” are provided. One skilled in the art would recognize and understand that the terms “heteroaryl” and “heterocycle” in the claims are limited by these definitions. Moreover, Applicants believe that any attempt to include in the claims all of the limitations found in the specification at page 28, lines 4 through 34, would result in a cumbersome claim language.

Further, the terms “heteroaryl” and “heterocycle” are understood in the art consistent with the relatively discreet definitions on page 28 of the specification. That is, the skilled artisan would not understand these terms to include very large rings or ring systems, nor would the skilled artisan understand the heteroatoms to go beyond nitrogen, oxygen and sulfur commonly seen in organic molecules.

Claims 1-20 stand rejected under 35 U.S.C. 112 as allegedly being indefinite for reciting “and” before “pharmaceutically acceptable salts and individual diastereomers thereof.” The claims have been amended to read “or pharmaceutically acceptable salts and individual diastereomers thereof.”

Claim 6 stands rejected under 35 U.S.C. 112 as allegedly being indefinite for reciting the variable “H” in a ring system. This claim has been amended such that “J” has been inserted in place of “H”, consistent with the specification and the other claims.

Claim 20 stands rejected under 35 U.S.C. 112 as allegedly being indefinite for various grammatical problems. As suggested by the Examiner, claim 20 has been amended such that its

its preamble now refers to "A compound selected from the group consisting of:", commas have been inserted after each recited structure, with the word "and" added between the last two structures.

Claim Rejections – 35 USC §112 and §101

Claim 22 stands rejected under 35 U.S.C. 112 and 101 for not reciting any steps in a process claim. Claim 22 has been deleted and claim 23 has been added. New claim 23 recites a "method of treating a condition selected from the group consisting of headache, migraine headache and cluster headache, said method *comprising the step of* providing the compound of Claim 1 to a patient in need thereof."

* * *

In view of the amendments and remarks presented above, Applicants respectfully request that any objections and rejections of claims be withdrawn and a Notice of Allowance be promptly issued.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date appearing below.

MERCK & CO., INC.

By J. Reynolds Date 10/24/06

Date: October 24, 2006

Respectfully submitted,

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